MULTIMEDIA UNIVERSITY

STUDENT ID NO

MULTIMEDIA UNIVERSITY

FINAL EXAMINATION

TRIMESTER 3, 2021 / 2022

ULK2612 – LAW OF BANKING

(All Sections / Groups)

8 AUGUST 2022

Reading Time: 9.00 a.m. – 9.15 a.m.
(15 Minutes)
Answering Time: 9.15 a.m. – 12.15 p.m
(3 Hours)

INSTRUCTIONS TO STUDENT

1. Students will have **fifteen minutes** during which they may read the paper and make rough notes ONLY in their question paper. Students then have the remaining **THREE HOURS** in which to answer the questions.

2. This Question paper consists of 4 pages with 4 Questions only.

3. Attempt **FOUR** questions. All questions carry equal marks and the distribution of the marks for each question is given.

4. Students are only allowed to bring in CLEAN AND ORIGINAL COPIES of the following statutes into the exam venue:
   i. Bills of Exchange Act 1949 of Malaysia;
   ii. Financial Services Act 2013;
   iii. Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001; and
   iv. Contracts Act 1950.
   "Clean" is defined to include no tagging, no annotation either by the publisher or anyone else, and no erased marking. Highlighting and underlining are also prohibited.

5. Please write all your answers in the Answer Booklet provided.

QUESTION 1

".. They are instruments by means of which a series of debts may be discharged without the use of cash. They have been described as payment postponed by the granting of credit. They are used for transactions conducted domestically and in international trade."

Per Abdul Malik Ishak J in *Leong Yew Chin v Hock Hua Bank Bhd (2008) 3 MLJ 340.*

Explain the characteristics of the negotiable instrument as described above.

(Total: 25 marks)

QUESTION 2

Graham Corporation is a newly established business in Malaysia with its headquarters in Melaka. The aim of the company is to empower the impoverished community by providing small business advisory services, offering deposit-taking for investment services and offering small loans without requiring collaterals.

One day, Alex saw an advertisement by Graham Corporation on a social media page that reads, "*grow your business with us, we are the number one bank for community in Malaysia*". Acting on the advertisement, Alex immediately enquired Graham Corporation about its services and immediately secured a loan amounting to RM8,000.00 for his business.

Subsequently, Alex failed to make payments to Graham Corporation due to his business failing. Graham Corporation threatens to sue Alex.

(a) Alex has now come to you, as a prominent banking litigation lawyer to seek for your advice. Alex questioned on the legality of the transaction. Advise Alex.

(15 marks)

(b) Would your answer be different from (a) if both Graham Corporation and Alex are based in London?

(10 marks)

(Total: 25 marks)

Continued...

QUESTION 3

On 15 April 2020, Green Grocers Sdn. Bhd. (GGSB) obtained a loan for RM1.5 million from SME Bank Bhd. secured by a fixed charge on land valued at RM2 million. It was further guaranteed by Hijau and Merah the directors of GGSB jointly and severally. The loan facility was dated 15 April 2020 whilst the guarantee was dated 15 July 2020 when Hijau signed the guarantee. However, Merah only signed the guarantee on 30 July 2020.

Meanwhile due to the Covid-19 pandemic, GGSB's business suffered and faced numerous problems and they were unable to service their loan repayments regularly. Consequently, SME Bank Bhd. recalled the loan and sued GGSB as well as Hijau and Merah as the guarantors, for the recovery of the loan with interest and costs. On 15 September 2021, SME Bank Bhd. obtained judgment against all parties. Meanwhile, Hijau resigned as Managing Director of GGSB on 15 August 2020 and claims that he is not liable on the guarantee. Merah claims that he was coerced into signing the guarantee by Hijau and further if Hijau is not liable on the guarantee then his liability should also cease. Hijau and Merah further claim that the bank should proceed to foreclose on the charge before proceeding to recover against the guarantors.

Discuss the liability of the guarantors.

(Total: 25 marks)

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Answer EITHER Question 4 (a) OR Question 4 (b)

QUESTION 4 (a)

Cybog has a current account, savings account and fixed deposit accounts with Digi Bank Bhd. (DBB). Cybog also uses DBB's internet banking facilities to purchase things online. Ever since the Covid 19 pandemic, Cybog got into the habit of shopping online for most of his provisions, and other goods and also switched to making online payments on all his bills. As Cybog was going through his online bank statements on 30 July 2022, he noticed that he had been charged for various luxury items that he had not purchased between the period March 2022 to June 2022. After rechecking his accounts several times, Cybog suspected that someone had hacked into his account and charged their purchases to his account. He calculated the total amount of wrongful debits to be RM 12,000-00. He immediately reported the matter to the DBB and lodged a police report. DBB deny liability as their records show that all fund transfers and payments were made using Cybog's identification numbers and digital signature.

(i) Discuss DBB's liability towards Cybog.

(15 marks)

(ii) What recourse may Cybog pursue if DBB deny liability?

(10 Marks)

(Total: 25 marks)

OR

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QUESTION 4 (b)

Intrakota Sdn. Bhd (Intrakota) is a customer of Green Bank Bhd. (GBB). Intrakota has given GBB specific instructions on its mandate and authorised cheque signatories. All cheques for sums within RM5,000.00 may be signed by any of one of its three directors namely Merah, Hijau and Biru. However, cheques exceeding RM5,000 must bear the signature of Merah together with any of the other two signatories. Intrakota claim that between June 2021 and April 2022, when their business was doing badly due to the Covid 19 pandemic, GBB had wrongfully paid out 55 cheques totalling RM150,000 ('the disputed cheques') purportedly drawn by its authorised signatories and wrongfully debited into Intrakota's current account with GBB. Merah, Hijau and Biru deny that they had signed the disputed cheques and allege that the signatures were forged. It was suspected that the cheques were forged by Intrakota's former employee, Ms. Tee Poo, who had been employed in their accounts department, working together with an employee of GBB. Ms. Tee Poo's employment had in fact been terminated in June 2021 as Intrakota had been downsizing its business. However, GBB deny any liability as it had supplied monthly account statements which had not been queried or disputed by Intrakota.

Critically examine GBB's liability if any, towards Intrakota.

(Total: 25 marks)

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